HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.33785 of 1997

31.7.2007

Between

K.L.K.Ratnam ..Petitioner

AND

The Zonal Manager, Food Corporation of India, Madras and others ..Respondents

:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.33785 of 1997

The writ petition has been instituted by a transport contractor of the Food Corporation of India (for short, "the F.C.I.) seeking a declaration that the action of the respondents in deducting the value of food grains to the extent of 0.25% from the bills of the petitioner on the ground of shortages of the quantities of the food grains transported by him, is illegal. It is not in dispute that the F.C.I. had established godowns of various dimensions at various places in the State of Andhra Pradesh. Depending upon their size and capacity, some of these godowns are described as buffer godowns and the food grains are transported from and out of such buffer godowns to various other local points for rendering them accessible to the local needs easily. For purposes of undertaking transportation of these food grains, a contract for a period of two years came to be awarded in favour of the writ petitioner. In accordance with the terms of the contract, he had to make available trucks which will be loaded with the food grains after undertaking the weighment at the dispatch point and were consigned to different godowns where again, the food grains are weighed and an acknowledgement is passed for their receipt. However, it has been realised that transportation of the food grains by road invariably results in transmission losses enroute and so as to offset the transport losses, various measures are evolved by the

F.C.I. and one of those earliest measures taken by the Food Corporation of India is reflected through its Circular bearing No.RC.F.1/1/7-Cont. dated 13.4.1970 setting out that one of the causative factors for the losses is attributable to the different modes of weighment or the usage of scales of weighment, though actually, no loss in transportion of food grains had occasioned. To deal with such shortages occurring essentially due to variation in the scales, it being fairly insignificant, the contractors are given allowance upto 0.25% in all the road transport contracts where different scales or different modes of weighment are adopted at the dispatching end and the receiving end. Thus, the problem encountered due to usage of different modes of weighment as the causative factor for the suspected transportation losses has been taken note of and the curative measures are also simultaneously adopted by the F.C.I. With the advancement in technology, modern methods of weighment have come to replace the conventional modes. Thus, the accuracy in the weighments is sought to be maintained and achieved. At some godowns, the electronic scales/ electronic lorry weigh bridges are installed while at the receiving end, majority of the godowns may not have such facilities. Therefore, at the receiving end, shortages in the weighment of the food grains had come to be noticed inspite of weighing the total quantity of food grains (100%) physically.

In fact, out of total 31 bills, 21 bills relating to the writ petitioner did not offer any such difficulties, inasmuch as the weighment of the food grains at both ends employed the same measures and modes, whereas with regard to the transportation undertaken forming part of ten bills, enormous differences have

cropped up giving rise to the present writ petition. It is the assertion of the writ petitioner that inspite of his faithful and accurate transportation of the food grains to and from various godowns of the F.C.I. situate at far off places, but nonetheless, he has not been extended the benefit of waiving the 0.25% towards the possible transportation losses occurring due to the different modes of weighment undertaken at both ends.

At my instance, the petitioner as well as the officials of the respondents have made sincere attempts to reconcile the issue and thereafter, an order dated 2.6.2007 came to be passed, the relevant portion of which reads as under:

> "As per Hqrs.Lr.No.F1/13/90.Conts. Dated 08.04.1997 (which is only applicable to the instant case) this allowance of 0.25% is admissible only if percentage weighment has been adopted at one or both ends and is not admissible if 100% weighment is taken at both the ends by Lorry weigh bridge and/or Beam/Plantform scale.
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> Whereas the Area Manager, FCI, DO, Sanathnagar has categorically stated vide their Lr.No.S&C.30/2/98. Conts. Dated 28.5.2007 which reads as follows:-
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> > "For twenty one transactions the mode of weighment at both the ends were same and 100% hence allowance for shortages upto 0.25% does not arise. And for remaining ten transactions, the weighment as dispatch points were through Lorry weigh bridge and at the receiving points, though the lorry weigh bridges were not available 100% weighment have been done through plantform/beam scales. And statement/certificate to this extent issued by the warehouse Managers in this regard are available with this office and photostat copies of such statements are enclosed herewith as a proof of cent percent

> weighment at both the ends. And as per the Hqrs. Circular No.F1/13/90. Conts. Dated 15.10.1999, the allowance of shortages upto 0.25% is admissible to the Transport Contractor only if different percentage weighment has been adopted at one or both the ends. As at both the ends cent percent weighment has been done though the mode of weighments are different, hence the Contractor is not admissible for allowance of shortages upto 0.25%."
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> In view of the foregoing, the undersigned hereby rejects the claim of the petitioner contractor for allowance of 0.25% transit loss (shortages) in the above said case and with this, the matter is disposed of."

In view of the controversy being in a narrow compass, I have examined the import of circular issued by the Headquarters of the F.C.I. on 8.4.1997. Through the circular, it had been reiterated that for working out the waiver of the transportation losses contemplated by the circular dated 13.4.1970, the unit of determining the percentage of losses had to be worked out and the three units which are worked out have been spelt out as under: a) The weight carried in a day for movement / transportation of food grains to railhead depot from railhead and vice versa. B) The unit of determining the percentage of losses would be weight carried in a month for movement/ transportation of food grains from procurement centers to depot and c) The unit of determining the percentage of losses would be weight carried in each consignment (i.e. the quantity of food grains assigned and delivered to transport contractor for which his acknowledgement obtained in the

shape of each truck chit) for inter depot movement/ transportation involving long distance.

It was also clarified that the allowance of 0.25% is admissible only if the percentage weighment has been adopted at one or both the ends and is not admissible if 100% weighment is taken at both the ends by lorry weigh bridge and/or beam or plat form scale. Therefore, each case was asked to be examined in due regard of unit and the method of weighment adopted. It will also be appropriate at this stage to point out that the F.C.I. Headquarters has clarified the circular instructions contained in their circular dated 8.4.1997 by issuing detailed instructions through their circular dated 15.10.1999. It has been set out as under:

> "According to the existing instructions, the allowance of shortages upto 0.25% is admissible to the transport contractors only if different percentage weighment has been adopted at one or both ends and is not admissible in case 100% weighment is taken at both the ends. This aspect has been discussed in the presence of Zonal Managers in the MPR meeting held on 21.9.1999. After detailed deliberations on the subject, it has been decided with the concurrence of finance and approval of competent authority that the allowance for shortages upto 0.25% would be allowed in cases where different modes of weighment have been adopted at the dispatching and receiving centers even if the weighment is taken on 100% basis at both the ends. It is further clarified that while shortages being taken on truckwise basis, it could be considered for a total period or for the total consignment for which the contract was entered into excluding the trucks where gain has been observed in stocks. These provisions would be applicable for future contracts only.

> It is reiterated that the adjustment of any gain either the movement for a particular day or for the consignment, as a whole, does not arise. The gain in weight in the stocks received by the receiving center would continue to be accounted for as per the existing procedure to the FCI. ZMs/ SRMs would be the competent authority to decide the cases of shortages with the concurrence of associate finance depending upon the merit of each case upto an allowance of 0.25% only.

From a perusal of the contents of the above circular dated 15.10.1999, it is manifestly clear that the allowance of shortages up to 0.25% towards the transportation losses would be allowed in cases where different modes of weighment have been applied, one at the dispatching end and the other at the receiving center, even if the weighment is taken at 100% basis at both the ends. But however, the circular instructions dated 15.10.1999 are specified to be applicable to future contracts only.

It is of significance to note that the controversy which has now been narrowed down to 10 bills of the writ petitioners centers round the different modes employed in the weighment and the units of weighment which have got to be worked out. It is not in dispute that electronic weighment machines are employed at the dispatching end whereas 100% weighment method has been employed at the receiving end, as there are no electronic weighing facilities available at such receiving ends. Therefore, the conclusion reached by the respondents in their order dated 2.6.2007 about the applicability of the circular instructions contained in the F.C.I. Headquarters letter dated 8.4.1997 read with the circular instructions dated 15.10.1999, is

inaccurate and incorrect. The circular instructions dated 8.4.1997 read with circular dated 15.10.1999 makes the position clear that even in cases of the present controversy, the allowance of 0.25% towards transportation losses is admissible. However each item has got to be examined by the competent authority before taking a decision with regard to the waiver of such transportation losses. The Zonal Manager and the Senior Regional Manager are constituted as the competent authorities to take a decision in this regard. In the instant case, the Senior Regional Manager is situate at Hyderabad and the Zonal Manager is available at Chennai. Since the Senior Regional Manager, Hyderabad is recognized as the competent authority, I consider it appropriate to direct him to look into the matter afresh in the light of what has been pointed out supra. The case of the writ petitioner could be considered for waiver of 0.25% of the weighment with reference to the unit specified in the circular instructions of the Headquarters of the F.C.I. dated 8.4.1997 read with the circular dated 15.10.1999 and the competent authority shall take a decision in the matter within a period of two months from the date of receipt of this order. It is open to the writ petitioner to submit a detailed representation enclosing such data and material, which he might consider appropriate to draw the attention of the Senior Regional Manager specifically thereto. Such a representation may be submitted within a period of 15 days from now.

With this, the writ petition is disposed of, but however, without costs.

Before I part with the case, I place on record my sincere appreciation for the enormous time and energy spent by both

the learned counsel for the petitioner as well as the learned Standing Counsel for the F.C.I. – Sri Meherchand Nori for trying to resolve the principal controversy in this writ petition.

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NOOTY RAMAMOHANA RAO.J.

31.7.2007
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